REMARKS

Applicants have considered the April 19, 2007 Office Action, and the amendments above together with the comments that follow are presented in a bona fide effort to address all issues raised in that Action and thereby place this case in condition for allowance. Claims 1-20 are pending in this application. In response to the Office Action dated April 19, 2007, claims 1, 7 and 20 have been amended. Care has been exercised to avoid the introduction of new matter. Adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure as, for example, the depicted embodiments and related discussion thereof in the written description of the specification. Entry of the present Amendment is respectfully solicited. It is believed that this response places this case in condition for allowance. Hence, prompt favorable reconsideration of this case is solicited.

Claims 1-7, 13-16 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fujita ct al. (U.S. Pat. No. 6,225,779, hereinafter "Fujita") in view of Okazaki et al. (JP 11-339828, hereinafter "Okazaki"). Applicants respectfully traverse the rejection.

Independent claims 1 and 20 have been amended, in part, to include a portion of dependent claim 7. Independent claim 1 discloses a stack type battery including, *inter alia*, a bipolar electrode comprised of a positive electrode active material layer, a current collector and a negative electrode active material layer laminated in this order. Independent claim 20 discloses a method of manufacturing a stack type battery including, *inter alia*, providing a bipolar electrode comprised of a positive electrode active material layer, a current collector and a negative electrode active material layer laminated in this order. The Examiner's attention is directed to Fig. 4 of the present application, which depicts the claim features added to the independent

claims. The stack type battery of the present claimed subject matter includes the bipolar electrode 30 comprising the positive electrode active material layer 32, the current collector 31 and the negative electrode active material layer 33 laminated in this order. See Fig. 4.

Applicants respectfully submit that the Examiner's reliance on the doctrine of inherency, at page 3 of the Office Action, is not factually viable. Applicants submit that the Examiner did not discharge the initial burden of establishing a prima facie basis to deny patentability to the claimed invention under 35 U.S.C. § 102 for lack of novelty, and that the Examiner's reliance upon the doctrine of inherency is misplaced. Inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient to establish inherency. *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *In re Oelrich*, 666 F.2d 578, 212 USPQ 323, (CCPA 1981). To establish inherency, the extrinsic evidence must make clear that the missing element must necessarily be present in the reference. Since this burden has not been met, the rejection over the subject matter claim 7, now present (in part) in claims 1 and 20 is not proper and should be withdrawn.

Moreover, Okazaki and claimed subject matter are distinct from each other in electrode arrangement (polarity). Specifically, in Fig. 2 of Okazaki, one upper voltage measuring terminal 3 is different in polarity (positive or negative) from the two lower voltage measuring terminals 3, the structure of which is obviously different from the present claimed subject matter and illustrated in Fig. 4.

Furthermore, Applicants respectfully disagree with the Examiner's proposed combination of Fujita with Okazaki. Fujita discloses a lithium ion battery, while in contrast, Okazaki discloses a fuel cell. It is inconceivable why one of ordinary skill in the art confronted with a

problem specific to a lithium ion battery would somehow have looked to the field of fuel cells. On this basis alone the imposed rejection should be withdrawn.

Furthermore, Okazaki, at abstract, claim 5, paragraph [0014] and paragraph [0028], discloses that "the positive terminal of the separator on the cathode side and the negative terminal of the separator on the anode side are arranged on the same end surface side in the disposed positions each other." Okazaki's language concerning the "disposed positions" is such that, on the same end surface side in Fig. 1 of Okazaki, the positive terminals and the negative terminals are arranged linearly in parallel to each other in the lateral direction. The Examiner's attention is directed to the marked-up drawing for Fig. 1 of Okazaki. This arrangement of Okazaki is different from that in any of Fig. 1, Fig. 6, Fig. 9, Fig. 12, Fig. 16, Fig. 18, Fig. 20 and Fig. 22 of the present invention.

Dependent claims 8-11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fujita in view of Okazaki and further in view of Sato et al. (U.S. Pat. No. 6,589,690, hereinafter "Sato"). Applicants respectfully traverse.

Dependent claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Fujita in view of Okazaki and Sato and further in view of Loutfly (U.S. Pat. No. 6,146,791, hereinafter "Loutfly"). Applicants respectfully traverse.

Dependent claims 17-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fujita in view of Okazaki and further in view of Evers et al. (U.S. Pat. No. 6,271,646, hereinafter "Evers"). Applicants respectfully traverse.

Applicants incorporate herein the arguments previously advanced in traversal of the rejection of claims under 35 U.S.C. § 103(a) predicated upon Fujita and Okazaki. The secondary and tertiary references to Sato, Loutfly and Evers do not cure the argued deficiencies of Fujita

and Okazaki. Thus, even if the applied references are combined as suggested by the Examiner, and Applicants do not agree that the requisite realistic motivation has been established, the claimed invention will not result. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988). Moreover, if any independent claim is non-obvious under 35 U.S.C. § 103(a), then any claim depending therefrom is non-obvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

It is believed that all pending claims are now in condition for allowance. Applicants therefore respectfully request an early and favorable reconsideration and allowance of this application. If there are any outstanding issues which might be resolved by an interview or an Examiner's amendment, the Examiner is invited to call Applicants' representative at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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